

United States District Court

NORTHERN DISTRICT OF

UNITED STATES OF AMERICA

V.

COMPLAINT

BENJAMIN KINYUA

CASE NUMBER: 3-13-MJ- 285-BK

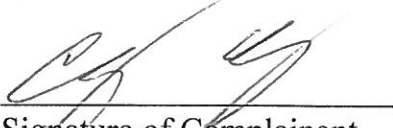
I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief. On or about March 7, 2013, in Dallas County, in the Northern District of Texas, defendant(s),

in violation of Title 18, United States Code, Section(s) 641, 1028(a)(7) and 2.

I further state that I am a(n) Special Agent with Internal Revenue Service, Criminal Investigation (IRS-CI) and that this complaint is based on the following facts:

See attached Affidavit of Special Agent, Craig Clotfelter (IRS-CI) which is incorporated and made a part hereof by reference.

Continued on the attached sheet and made a part hereof: XX Yes No

  
Signature of Complainant  
CRAIG CLOTFELTER  
Special Agent, (IRS-CI)

Sworn to before me and subscribed in my presence, on this 16th day of May, 2013, at Dallas, Texas.

RENEE HARRIS TOLIVER  
UNITED STATES MAGISTRATE JUDGE  
Name & Title of Judicial Officer

  
Signature of Judicial Officer

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS

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IN THE MATTER OF THE APPLICATION	§	<u>AFFIDAVIT</u>
OF THE UNITED STATES OF AMERICA	§	
FOR A CRIMINAL COMPLAINT -	§	
BENJAMIN KINYUA	§	

**FILED UNDER SEAL**

I, Craig Clotfelter, being duly sworn, depose and state as follows:

**INTRODUCTION AND AGENT BACKGROUND**

1. Upon information and belief, BENJAMIN KINYUA, aka "BANTI MUKINDA" has violated Title 18, United States Code, Section 1028 (a) (7) Identity Theft; Title 18 United States Code, Section 641, Theft of Government Funds; Title 18, United States Code, Section, Title 18, United States Code, Section 2, Aiding and Abetting.

The source of your affiant's information and the grounds for his belief are as follows:

2. I have been a Special Agent ("SA") with the Internal Revenue Service, Criminal Investigation ("IRS-CI") since June of 2009. I have completed a 13-week Criminal Investigator Training Program and a 17-week Special Agent Basic Training Program at the National Criminal Investigator Training Academy at Glynco, Georgia, where I received training on interviewing, search and arrest warrants, defensive tactics, and firearms. In addition, I received training on tax cases, money laundering, and tax-related cases. I previously worked as a Financial Examiner for the Texas State Securities Board for almost five years where I conducted investigations into allegations of securities fraud. I have received additional training on the investigation of identity theft, processing of funds, cybercrime and the collection of electronic evidence, conducting international investigations and have served as the coordinator for the return preparer program/questionable refund program ("RPP/QRP") for the 2010 and 2011 filing seasons.
3. Based upon the facts and information obtained by the Affiant, other Federal Law Enforcement Officers, surveillance and corroboration with witnesses, the Affiant alleges that there is probable cause that BENJAMIN KINYUA aka "BANTI MUKINDA" has cashed checks funded by the United

States Treasury from stolen identities used to file fraudulent tax refunds through the Internal Revenue Service.

#### **BACKGROUND OF INVESTIGATION**

4. Each year taxpayers have the option of either mailing their federal income tax returns to the Internal Revenue Service ("IRS") or filing their return electronically ("E-File"). A taxpayer can prepare and file his electronic return himself using available software such as Turbo Tax or hire a return preparer to prepare and electronically file the return. In order to electronically file tax returns with the IRS, a return preparer must complete an application process to become an authorized electronic filer of income tax returns. The requesting party must complete and submit Form 8633, Application to Participate in the IRS E-File Program. Upon IRS approval of the application, the requestor becomes an Electronic Return Originator ("ERO") and is assigned an Electronic Filing Number ("EFIN") which the IRS uses to identify and monitor ERO activity. Once a return preparer obtains an EFIN, he can purchase professional return preparation and transmission software from an authorized provider, such as Drake Software. The software assists the return preparer in completing and transmitting federal tax returns. The return preparer must provide an EFIN number in order to purchase the software. The software company, such as Drake, provides technical support to the return preparer and monitors returns that are filed through their software system.
5. If a taxpayer is due a refund, there are several options for payment. A refund check can be mailed to the taxpayer's residence or the refund can be directed to a bank account by including bank routing and account information in the appropriate section of the tax return. Some return preparers purchase check stock and debit cards from companies that support software providers, such as EPS Financial Services, Inc. ("EPS"). The account number associated on the return is used to hold the funds until a method of distribution is selected. Once the IRS accepts the return and authorizes the refund, the refund is funded to the account at EPS. The taxpayer will then meet with the return preparer and determine whether they want the refund deposited onto a debit card or printed on a check. The preparer has the flexibility to print the refund amount onto the check stock previously purchased or to associate the refund with a debit card previously purchased.
6. ID theft schemes are often a subset to traditional Questionable Refund Program ("QRP") type schemes investigated by IRS-CI. In recent years, ID theft schemes have become more sophisticated, more prevalent, and increasingly more popular with criminals as a way to obtain illegal funds with little risk of detection or prosecution. Significant multi-state ID theft

schemes have been identified and are being investigated by IRS-CI in the Dallas Field Office and other field offices.

7. ID theft schemes identified in recent years involve the use of stolen or purchased SSNs of deceased taxpayers, incarcerated persons, and/or victims whose information is located within company and commercial databases. The stolen SSNs are used to file fraudulent tax returns in order to obtain federal income tax refunds. Oftentimes, individuals involved in these schemes are difficult to identify due to the nature of the schemes and the variety of methods used to perpetrate them. The schemes range from a sophisticated series of electronic filings and the use of pre-paid debit cards to the more basic prepared and mailed returns, with refund checks directed to a common address or addresses. ID theft schemes often involve a network of individuals needed to complete different stages or aspects of the scheme. These individuals may include the following:
  - Source of the SSN;
  - Preparer of the returns;
  - Person to intercept a mailed refund;
  - Person or "runner" used to negotiate the check(s);
  - Check casher; and
  - Financial institution.
8. Often the perpetrators of identity theft cases are securing false identities, filing false tax returns, securing false tax refunds, and moving on within days or weeks. Many of the ID theft schemes are involving foreign nationals operating within and outside of the United States.

#### **PROBABLE CAUSE**

9. The facts, which support this probable cause are as follows:
  - a. On February 28, 2013, KINYUA met with an undercover Special Agent with IRS-CI ("UCA"). KINYUA presented an Ohio Valley Bank ("OVB") check made out to E.R. for \$4,513.05. KINYUA acknowledged it was a tax refund check that had been printed that same day. During the meeting, KINYUA called an unidentified individual, conversed in a non-English language, and wrote a SSN and DOB that he told the UCA corresponded to the payee listed on the check. KINYUA agreed to cash the check for 80% of its face value for approximately \$3,700.00. The UCA paid KINYUA \$3,700.00 in cash for the check. KINYUA offered to obtain more refund checks that evening to present to the UCA for cashing. KINYUA called unidentified individuals during the meeting and instructed them "tell them to get them ready".

- b. On February 28, 2013, KINYUA met with the UCA that same night and presented three EPS checks made payable to three other individuals totaling \$8,852.89. KINYUA again acknowledged these were refund checks. KINYUA wrote SSNs and DOBs corresponding to the payees on the checks. KINYUA agreed to cash these checks with UCA for 80% of their face values for approximately \$7,000.00. The UCA paid KINYUA \$7,000.00 for these checks. During the discussion of the EPS checks KINYUA stated "even if I do them, I go with them". KINYUA told the UCA he would like to meet with the UCA again to cash more refund checks.
- c. On March 7, 2013, KINYUA again met with UCA at 8687 North Central Expressway, Dallas, Texas, and presented six more EPS checks totaling \$25,273.00. KINYUA told UCA he called the source of the EPS checks and wrote the SSNs and DOBs on the back of the checks while in the parking lot before he met with UCA. KINYUA agreed to cash the checks at 80% of the face value for \$12,000.00 in cash, with the balance to be paid when KINYUA met with UCA again. The UCA paid KINYUA \$12,000.00 in cash for the checks.
- d. On March 21, 2013, KINYUA again met with UCA. KINYUA told UCA his source might be interested in selling SSNs and DOBs. KINYUA accepted \$8,000.00 in cash for the remaining balance for checks presented on March 7, 2013.
- e. On April 29, 2013, KINYUA contacted UCA and instructed him to login to a Yahoo!E-mail account. Attached to a draft e-mail message were images of a United States Treasury Check payable to L.G. in the amount of \$90,383.00. Also attached was an image of a Social Security Card for L.G. Further attached was a Texas Driver's License for L.G. with an address of 3262 Westheimer Road, Apartment 255, Houston, Texas matching the address on the United States Treasury Check.
- f. On April 24, 2013, SA Clotfelter interviewed L.G. SA Clotfelter had contacted L.G. as the check had been detected on an associated investigation. L.G. stated he had never filed a federal income tax return and never lived nor visited Texas. L.G. only allowed his parents to include him as a dependent on their return. L.G. never received a United States Treasury Check in the amount of \$90,383.00 and had not authorized anyone to cash such a check.
- g. On May 1, 2013, SAs Hojdea and Norwood interviewed D.L. D.L. was one of the payees on one of the six EPS checks presented by KINYUA on March 7, 2013. D.L. was shown a 2012 Form 1040A

United States Individual Income Tax Return that had been identified as corresponding to the EPS check. D.L. confirmed his SSN on the return but stated he was retired and had not filed a tax return since 2008 and that the return was falsely filed on his behalf. D.L. was shown the EPS check in the amount of \$4,121.00. D.L. stated he had never received the EPS check and had not authorized anyone to cash the check.

- h. On May 1, 2013, SAs Hojdea and Norwood interviewed D.J. D.J. was also one of the payees on another one of the six EPS checks presented by KINYUA on March 7, 2013. D.J. was shown a 2012 Form 1040A United States Individual Income Tax Return that had identified as corresponding to the EPS check. D.J. confirmed the SSN on the return was his but the information on the return was false including the address in Pasadena, Texas. D.J. had attempted to file his 2012 return but it was rejected and was told by the IRS that someone had already filed a return on his SSN. D.J. was also shown the EPS check in the amount of \$4,399.00. Again the address for D.J. was listed as Pasadena, Texas. D.J. reiterated that he never lived in Pasadena, Texas, had never received the EPS check nor authorized anyone to cash the check.

### CONCLUSION

10. Affiant submits that this affidavit supports probable cause to believe that BENJAMIN KINYUA has violated federal criminal offenses, including Title 18, United States Code § 641, Theft of Government Funds; Title 18, United States Code Section 1028 (a) (7), Aggravated Identity Theft; and Title 18, United States Code, Section 2, Aiding and Abetting.

  
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Craig Clotfelter  
Special Agent  
Internal Revenue Service  
Criminal Investigation Division

Sworn and subscribed before me on this the 16th day of May 2013.

  
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RENEE HARRIS TOLLIVER  
UNITED STATES MAGISTRATE JUDGE